

EXAMPLES:

***Contrasting Results of
Proposed Regulatory Action***

ATTACHMENT 6

Examples:

Contrasting Results of Proposed Regulatory Action Presented at March 2004 Commission Meeting to Address General Plan Decisions

The following examples are presented to illustrate the contrasting results yielded under the same set of facts by the existing regulations and proposed regulatory action.

EXAMPLE A: A city planning commission is asked by Acme Company to approve an amendment of the land-use element of the city's general plan so as to expand the commercial district of the city to include land Acme has purchased for its new office location. The principal residence of a member of the planning commission is a single family home located within 500 feet of the proposed boundaries of the expanded commercial district.

The results of applying the existing regulations and the three options to this example are summarized in TABLE 1, which is followed by a detailed analysis.

TABLE 1

EXAMPLE A		
Description	Participate in Decision	Disqualified From Participation
Existing Regulations	No	Yes Official's property is within 500 feet and a material financial effect is presumed
Steps 4&5, Reg. 18704.2/18705.2, Direct or Indirect/Materiality	No	Yes Decision is not one of policy, is linked to an identifiable real estate parcel and agency's subsequent approval of specific plan/permit
Step 6, Reg. 18706.1, Reasonable Foreseeability	No	Yes Decision is not one of policy, is linked to an identifiable real estate parcel and agency's subsequent approval of specific plan/permit
Step 7, Reg. 18707.10, Public Generally Exception	No	Yes Decision does not apply to all real property interests located in the jurisdiction

Existing Regulations: The public official's principal residence is an economic interest (regulation 18703.2) which, because of its proximity to the property which is the subject of the decision, is deemed to be directly involved in that decision (regulation 18704.2). As directly involved real property, it is presumed that the decision will have a reasonably foreseeable material financial effect on the official's principal residence (regulation 18705.2(a)(1)) resulting in a disqualifying conflict of interest, unless: a) the presumption is rebutted by proof that it is not reasonably foreseeable that the decision will have any financial effect at all on the real property (regulation 18705.2(a)(1); b) the general form of the public generally exception can be applied (regulation 18707.1); or c) the legally required participation exception can be applied (regulation 18708). In

summary, under existing regulations the public official is presumed to have a disqualifying conflict interest and must undertake additional efforts to either rebut the presumption or demonstrate the applicability of the general form of the public generally exception.

Steps 4 & 5 (Direct/Indirect Involvement and Materiality Standard) - Regulations 18704.2 and 18705.2: Under proposed changes to regulation 18704.2, the economic interests of a public official will be deemed indirectly involved in a decision to amend a general plan or component thereof if the nature of the amendment is advisory or policy-oriented, and not tied to a specific plan or any subsequent permitting, licensing, or other activity by the agency which typically is associated with a specific development. In this instance, the proposed amendment is linked to Acme's specific development of a new headquarters location and is not one describing planning objectives or otherwise one exclusively of policy. Thus, the proposed amendment of regulation 18704.2 would not extend to this decision and the official's real property interest will continue to be directly involved in the decision, leading to the same results as found under the existing regulations.

Step 6 (Reasonable Foreseeability) – Regulation 18706.1: Under proposed changes to regulation 18706.1, it is deemed not to be reasonably foreseeable that a decision will have a material financial effect upon any of a public official's economic interests if the decision is one to adopt or amend a general plan or component thereof and the nature of the amendment is advisory or policy-oriented, and not tied to a specific plan or any subsequent permitting, licensing, or other activity by the agency which typically is associated with a specific development. Again, since the proposed amendment is linked to Acme's specific development of a new headquarters location, the decision will not fall under proposed regulation 18706.1 and the public official will have a potentially disqualifying conflict of interest, as described first above.

Step 7 ("Public Generally: Exception) – Regulation 18707.10: Unlike the foregoing options, the nature of the decision – amendment of the land use element – is not a disqualifying factor if there is an affirmative vote by the Commission on proposed regulation **18707.10(b)(1), decision 4**. In that case, providing all other criteria under the new regulation are met, the official will not have a disqualifying conflict of interest. On the other hand, if the Commission votes against decision 4, the nature of the governmental decision must be of the type described under the general criteria of subdivision 18707.10(b)(2) and the remaining criteria must be met.

These other criteria require that the proposed change be neutral on its face, that is, it potentially applies to all persons with interests in real property in the relevant jurisdiction/district (18707.10(c)). Under our example, the decision to expand the boundaries of the commercial district applies only to the new property to be included within the commercial district, or at its most expansive interpretation, to all properties located within the commercial district, and not the entire jurisdiction or district the official represents. Thus, even if the Commission decides to include the changes in the land use element within the scope of this exception (Decision 4), it would not be

sufficiently inclusive to embrace the example, because of the requirement at 18707.10(c) that the decision apply to all persons with interests in real property located in the entire jurisdiction of the official's agency or the district the official represents.

EXAMPLE B: A city planning commissioner is proposing that the circulation element of the city's plan be amended to set new criteria for determining where traffic control measures are to be installed. Under the new criteria, a traffic signal would be located within 500 feet of the official's principal residence. As part of this amendment, a traffic map would be submitted depicting where different types of traffic control measures (signals, stop signs, crosswalks, barriers, etc.) would be installed throughout the jurisdiction, when these new criteria are applied. The principal residence of the planning commissioner is a single family home on a 120 foot by 120 foot lot, and the minimum lot size for a single family residence in the city is 100 feet by 100 feet.

The results of applying the existing regulations and the three options to this example are summarized in TABLE 2, which is followed by a detailed analysis.

TABLE 2

EXAMPLE B		
Description	Participate in Decision	Disqualified From Participation
Existing Regulations	No	Yes Official's property is within 500 feet and a material financial effect is presumed
Steps 4&5, Reg. 18704.2/18705.2, Direct or Indirect/Materiality	Yes Decision is one of policy and depiction of parcel on city map does not link the decision to an identifiable parcel	No
Step 6, Reg. 18706.1, Reasonable Foreseeability	Yes Decision is one of policy and depiction of parcel on city map does not link the decision to an identifiable parcel	No
Step 7, Reg. 18707.10, Public Generally Exception Decision 6, Option 1	No	Yes Decision not applied proportionally or based on relative size
Step 7, Reg. 18707.10, Public Generally Exception Decision 6, Option 2	Yes Official's property does not exceed minimum residential lot size by more than 20%	No

Existing Regulations: The public official's principal residence is an economic interest (regulation 18703.2) which, because of its proximity to the location of a new traffic signal, is deemed to be directly involved in that decision (regulation 18704.2). As directly involved real property, it is presumed that the decision will have a reasonably foreseeable material financial effect on the official's principal residence (regulation 18705.2(a)(1)) resulting in a disqualifying conflict of interest, unless: a) the presumption is rebutted by proof that it is not reasonably foreseeable that the decision will have any financial effect at all on the real property (regulation 18705.2(a)(1); b) the public

generally exception can be applied (regulation 18707.1); or c) the legally required participation exception can be applied (regulation 18708).

In this instance, it is reasonably foreseeable that the placement of a traffic signal, with a resultant increase in safety for vehicular and pedestrian traffic, and regulation of traffic congestion, will have some financial effect on real property values in the affected neighborhood. Thus, the presumption would not be rebutted. Under existing regulations, the public official is presumed to have a disqualifying conflict interest and must undertake additional efforts to demonstrate the potential applicability of the general form of the public generally exception (regulation 18707.1) in order to participate in the decision.

Steps 4&5 (Direct/Indirect Involvement and Materiality Standard)- Regulations 18704.2 and 18705.2: Under proposed changes to regulation 18704.2, the economic interests of a public official will be deemed indirectly involved in a decision to amend a general plan or component thereof if the nature of the amendment is advisory or policy-oriented and not tied to a specific plan or any subsequent permitting, licensing, or other activity by the agency which typically is associated with a specific development. In this instance, the proposed amendment sets forth criteria for utilization of various types of traffic control measures and is thus one that describes planning objectives or is purely one of policy. It is not linked to the agency's prior, concurrent or subsequent approval of, or change to, a permit, license, zoning designation, zoning variance, land use ordinance, or specific plan or its equivalent. Although the amendment would identify specific properties upon which traffic control measures would be installed, this identification is provided on a map encompassing the entire jurisdiction, and thus the decision does not concern an identifiable real estate parcel. Thus, the proposed amendment of regulation 18704.2 would extend to this decision and the official's real property interest will be indirectly involved in the decision.

It is presumed under regulation 18705.2(b)(1) that a governmental decision will NOT have a reasonably foreseeable material financial effect upon indirectly involved real property. The public official would be permitted to participate in the decision whether to amend the circulation element of the city's general plan, unless the presumption is rebutted. Under the proposed amendment to regulation 18705.2(b)(1), effects on traffic alone would not rebut this presumption. Therefore, the official would be able to participate.

Step 6 (Reasonable Foreseeability) – Regulation 18706.1: Under this option, the same criteria are used with respect to identifying decisions eligible for inclusion under the new regulation. Again, the decision whether to amend the circulation element of the city's general plan would fall under the regulation. The consequence, however, would be different in that it is deemed not to be "reasonably foreseeable" that the decision will have a material financial effect upon any of the official's economic interests.

Step 7 ("Public Generally: Exception) – Regulation 18707.10: The decision to amend the circulation element of a general plan is one of the listed decisions potentially

eligible for this special form of the public generally exception. (Regulation 18707.10(b).) Unlike the prior example, this decision is one which applies to all persons with interests in real property in the entire jurisdiction of the official's agency. (Regulation 18707.10(c).) The decision is one to set new criteria for the installation of different types of traffic control measures throughout the entire city. Although it is a factual question to be answered on a case-by-case basis, it is likely that criteria for installing traffic control measures throughout the city would affect the property values of 5,000 or 10% of the property owners or homeowners in the city.

Under **Decision 6**, the official would have to undertake an analysis to determine whether the financial effect of the decision on his or her principal residence will be substantially the same as the effect upon the significant segment, as is presently the case under the general form of the exception. The advantage of the proposed regulation is that it describes specific factors which an official may include in that analysis. (Regulation 18707.10(e).) If the Commission decides against Decision 5, then either Option 1 or Option 2 of Decision 6 provides the applicable standard for this analysis.

Under **Decision 6, Option 1**, all of the real property of the significant segment would have to be located within 500 feet of the official's principal residence or the decision is to be implemented on a proportional basis, based solely on property size. Criteria for installation of traffic control measures are not based solely on the size of properties located along traffic routes. Rather, they can be expected to be based on vehicular and pedestrian traffic, and associated topographical and safety features. As was the case in the first example, all of the members of this significant segment would have to be located within 500 feet of the official's principal residence, which is again unlikely, unless the jurisdiction is highly urbanized with multi-unit dwelling structures. Thus, under Decision 6, Option 1, this special form of the public generally exception would most likely not apply and the official could not participate in the decision.

Under **Decision 6, Option 2**, since the amendment of the circulation element would not change any zoning designations or modify current or potential uses of the official's principal residence or of the real property of the significant segment, the "substantially the same manner" criteria at subdivisions 18707.10(e)(1)(B) and (e)(1)(C) are met. The remaining criteria include the numerical standards of subdivision 18707.10(e)(1)(A) and the proportionality standard of subdivision 18707.10(e)(1)(D).

In this regard, the proportionality standard means that the size of the public official's real property and the minimum parcel size in the jurisdiction do not vary by more than a specified percentage. Under the numerical standard, one version of subdivision 18707.10(e)(1)(A) requires that there be at least 100 properties under separate ownership within a 2-mile radius of the official's principal residence. Both of these are factual determinations to be made on a case-by-case basis. However, in a typical residential community, the "100 properties within a 2-mile radius" standard would invariably be met.

Under our example, the public official's principal residence is 20% larger than the minimum lot size for single family residential parcels in the city. Thus, under subdivision 18707.10(e)(1)(D), the variance between official's real property and the minimum lot size would potentially qualify for the exception if the Commission uses 20%, as opposed to 15% or 10%, as the threshold.